

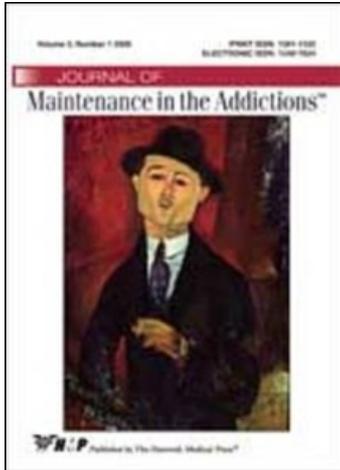
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Trading One Drug for Another? What Drug Treatment Court Professionals Need to Learn About Opioid Replacement Therapy

The Honorable Peggy Fulton Hora

ABSTRACT. Historically, drug treatment courts (DTC) have been hostile to medically assisted treatment (MAT) with methadone. Many judges required defendants to stop, taper or forebear treatment with methadone as a condition of admission to or graduation from DTC. This has sometimes had disastrous results including the death of at least one DTC participant and a long prison sentence for others. There are national changes within the DTC movement that makes this an ideal time for MAT providers to approach and work with DTCs. This paper reviews the historical antagonism and recent changes that make a new partnership possible. [Article copies available for a fee from The Haworth Document Delivery Service: 1-800-HAWORTH. E-mail address: <docdelivery@haworthpress.com> Website: <<http://www.HaworthPress.com>> © 2004 by The Haworth Press, Inc. All rights reserved.]

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Judge Hora has lectured nationally and internationally and has written extensively on issues surrounding substance abuse, pregnant and parenting women, drug treatment courts and therapeutic jurisprudence. Her recent projects included training on drug courts in Osaka, Kyoto and Tokyo, Japan. Her latest article, "Judicial Satisfaction When Judging in a Therapeutic Key," was published this year in the journal *Contemporary Issues in Law* in the United Kingdom.

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INTRODUCTION

At the 2003 National Association of Drug Court Professionals (NADCP) training conference attendees at a plenary session entitled “The Great Debate: Medical Management of Drug Abuse” were asked to raise their hands if they believed the following statement: “Taking methadone is trading one addiction for another.” An overwhelming majority of the audience responded in the affirmative. The panel members (Mark Parrino, president of the American Association for the Treatment of Opioid Dependence (AATOD), Dr. Andrea Grubb Barthwell, then Deputy Director for Demand Reduction of the White House Office on National Drug Control Policy (ONDCP), and I) had their work cut out for them. The executive director of The Fraternal Order of Police, the largest police organization in the nation, echoed this exact sentiment when Barry McCaffrey, former director of the ONDCP announced the expansion of Methadone as national policy in 1998. Jim Pasco said, “Where is the wisdom in substituting one drug for another one?”¹

At the 2004 annual meeting of the New England Association of Drug Court Professionals (NEADCP) it was reported that the keynote speakers were well received but “. . . a later discussion designed to educate judges about office-based opiate treatment exposed some deeply set disagreements between treatment advocates and drug-court practitioners.”² Mr. Parrino defended methadone pointing out that it is an evidence-based medication, not a belief system. Despite his rather spirited defense as it was described, one woman who is a member of the NEADCP Board, rose from the audience and said, “I’m a judge, and I don’t believe in it.”³

DEVELOPMENT OF DRUG TREATMENT COURTS

Drug treatment courts were developed about 15 years ago in direct response to the “war on drugs” which resulted in huge numbers of incarcerated prisoners and overloaded court dockets. These new, problem-solving courts recognize that many criminal cases that reach the courts involve alcohol or other drugs. They further recognize substance abuse treatment as the most effective way to reduce criminal behavior and protect the community. Most such courts throughout the United States oper-

ate on an abstinence model and include a prohibition on drinking alcohol as well as using illicit substances. A few require participants to quit using tobacco products as well. Until recently, many judges did not allow participants to graduate if they were on opioid replacement therapy and some even prohibited participation in the court all together if pharmacotherapeutic interventions were used.

A tragedy in a California court and a change in leadership at NADCP laid the groundwork for a Drug Court Practitioner Fact Sheet, issued in April of 2002, supporting the use of opioid replacement therapy in drug treatment courts.⁴

In March, 2000, Bradley Douglas Moore, a drug treatment court participant in Nevada County, CA, was ordered to stop taking methadone by the county's drug court judge. Two months later he died from an overdose of heroin. The judge said, "I do not claim to be an expert on methadone, but my understanding is that it's as . . . close to being as addictive as heroin. So if a person chooses to not be a drug addict, they can also choose to not be addicted to methadone. Our goal is to break the cycle of addiction."⁵ To complicate the tragedy, the judge said he never consulted a physician about Moore's case. John McCarthy, executive director of the Bi-Valley Medical Clinic that Moore patronized, called the judge's decision "ignorant and perhaps arrogant." He said, "[The] court . . . overruled the considered medical judgments of a physician-led team of health providers."⁶

The California Legislature was quick to take action after this incident and enacted Penal Code Section 1000.8. It states, in essence, that participation in a licensed methadone or levoalphacetylmethadol (LAAM) program cannot be a disqualifier for participation in drug treatment court or deferred entry of judgment diversion programs.⁷ Furthermore, California's Substance Abuse and Crime Prevention Act of 2000 ("Prop. 36")⁸ specifically includes "narcotic replacement therapy" in its definition of drug treatment. Thus, California judges are now prohibited from banning opioid replacement therapy in those programs. However, practice is sometimes slow to catch up to the law. Continuing judicial education on the law's requirements is needed to fully implement the legislation.

In another example of a judge usurping a medical opinion, in June of 2003, Kimberly Bucklin was sentenced to three years in state prison for violating a probation condition that prohibited her from taking methadone. Ms. Bucklin's physician had prescribed the medication for symptoms related to her OxyContin™ withdrawal. The Commonwealth's prosecutor, Dennis Lee, said judges often prohibit people from taking Methadone as a condition of probation because of the unsavory reputa-

tion of clinics⁹ but this was the first time he knew of someone being sentenced to state prison for doing so.¹⁰

Not all judges are insensitive to the issue however. In New Hampshire in 2003, one judge ordered the County jail to allow an inmate to continue methadone maintenance during his 270-day sentence. His lawyer argues that forcing him to withdraw “cold turkey” was cruel and unusual punishment violative of the Eighth Amendment. The State Supreme Court overturned the trial judge’s order however and ruled that it was too costly to require the jail to transport the prisoner for methadone treatment.¹¹

NADCP, which was founded in 1994, is an outreach and national membership organization made up of drug treatment court professionals. Through conferences, training institutes and publications, NADCP and its sister organization, National Drug Court Institute (NDCI), is the primary source of information in the field. It has only been in the last few years that any training was done on methadone, LAAM, or buprenorphine. When NDCI, the educational arm of NADCP, agreed to publish the Methadone Fact Sheet, it took about a year of negotiations to reach consensus on the final publication. In 2003, opioid replacement therapy for the first time was given the honor of being the subject of a plenary session in the Adult Drug Court training. However, as noted above, at least half of the drug court professionals in attendance are gravely misinformed about the issue. Hopefully, this will soon be remedied by NADCP’s new initiative to travel across the U.S. and educate community leaders and drug court professionals about methadone and its effectiveness. In 2004, Judge Karen Freeman-Wilson (Ret.), chief executive officer of NADCP, said, “One of our major responses is to train drug courts all over the country, treatment providers and judges, insist they understand our position and how it is related to methadone. It is appropriate for a person to participate and complete a drug court program and be in a methadone clinic.”¹²

There also exists a treatment program barrier in the form of antagonism against Medication Assisted Treatment with methadone (MAT). Many treatment providers are themselves in recovery and may have recovered with the help of 12-Step meetings. Although the International Headquarters of AA has a brochure entitled “Medication and the AA Member” that condones the use of medications, including MAT, anyone in an AA meeting can say what they want. Thus, methadone patients who attend a 12-Step meeting may be discouraged from taking their medication. Moreover, treatment providers may refuse to treat persons on methadone. This is slowly changing, most surely because of the explosion in

misuse of OxyContin™. “Although lifelong methadone use remains controversial, many addiction-treatment facilities are utilizing the approach because of its proven effectiveness”¹³

AN OPPORTUNITY FOR EDUCATION AND UNDERSTANDING

Between the new education efforts of NADCP and changes in state laws, now is an opportune time to educate the judiciary and other drug court professionals on MAT. Although there is still resistance in the judiciary, judges are trained to look at evidence. A presentation that is factual and evidence-based will go a long way with judges. Moreover, studies that show a reduction in arrests and other misbehavior by MAT patients will bolster the argument that methadone increases public safety. Judges are extremely receptive to arguments that an intervention is both medically sound and serves to increase protection of the community. Come armed with the NADCP Methadone Fact Sheet. Ask Judge Freeman-Wilson to visit your area. Finally, problems that do exist such a clinic location, relapse rates, unauthorized use of methadone, and others should not be glossed over. Any presentation should include acknowledgement of the problems and possible solutions.

In advocating for your client, make sure the judge knows the laws that may apply that prohibit discrimination against methadone patients and understands exactly what the protocol will be. How is your program a “good” one? What kind of counseling exists? Do you have any longitudinal studies that support your position? Do you receive Federal grants? Have you received any awards? Are your directors or other personnel published or otherwise recognized in the field as experts? Just as treatment providers are not fuzzy headed, do-gooders, judges are not Neanderthals or Luddites. A clear, scientific, dispassionate presentation will be well received by a judge. And if it’s not, seek appropriate remedies like an appeal, complaint to the presiding judge or the Commission on Judicial Performance and, in the most extreme case, ask your attorney to write a “cease and desist” letter pointing out to the judge that practicing medicine without a license is a crime. There is no reason judges and other drug treatment court personnel should not embrace MAT. It’s your job to help educate them to do so.

NOTES

1. Fields, Gary and Mark Truby, "Drug chief wants to expand availability of methadone," *USA Today* (Sept. 30, 1998) at 5A.
2. Curley, Bob, "Recovery Advocates, Drug Courts Seek Common Ground at Conference," <http://www.jointogether.org/sa/news/features> (9-2-2004).
3. *Id.*
4. For a complete copy of the Fact Sheet, go to <http://www.ndci.org/publications/MethadoneFactSheet.pdf> (last visited August 15, 2003).
5. Furillo, Andy, "Death of addict spurs new debate over methadone," *Sacramento Bee* online at http://classic.sacbee.com/news/old/local02_20000322.html
6. *Id.*
7. Penal Code Section 1000.8, Ch. 815 (2000). For the complete text, see <http://www.leginfo.ca.gov/cgi-bin/statquery> (last visited August 15, 2003).
8. For the California Department of Alcohol and Drug Programs' Fact Sheet, see <http://www.adp.cahwnet.gov/SACPA/prop36.shtml> (last visited August 15, 2003).
9. Perhaps this prejudice will be alleviated by office-based therapies like Buprenorphine.
10. "Va. Woman Jailed for Taking Methadone on Advice from Doctor," *Join Together Online* (Aug. 23, 2004) <http://www.jointogether.org/sa/news/summaries/reader/0,1854,574254,00.html>
11. "Order Requiring Jail Methadone Overturned by State High Court," *Criminal Justice Drug Letter* (Sept. 2003) at p. 5.
12. "NADCP to Train Drug Courts About Methadone," *Join Together Online* (Nov. 10, 2004) <http://www.jointogether.org/sa/news/summaries/print/0,1856,575140,00.html>
13. "More Addiction Specialists Accept Long-Term Methadone Use," <http://www.jointoether.org/sa/news/summaries> (9-26-2003).

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